

APPROVED

**MINUTES**

**CANBY PLANNING COMMISSION**  
*Regular Meeting*

*March 8, 1993*

*7:30 p.m.*

**I. ROLL CALL**

Present: Chairman Schrader, Vice-Chair Mihata, Commissioners B. Gustafson, Fenske, Wiegand, Maher, Elliot.

Staff Present: Robert Hoffman, Planning Director; Jim Wheeler, Assistant Planner; and Joyce Faltus, Secretary.

Others Present: Dorothy and George Mickel, Peggy Sigler, Norma J. Bivens, Betty Langdon, Bonnie and Duane Zacher, Bob and Patty Moore, Gary Eklund, Lori Johnson, Don Vigus, Morris Cederquist, Ben Sandsuir, Jerry and Judith Rothe, Martha Schrader.

**II. MINUTES**

The minutes of **January 25, 1993** were postponed to March 22, 1993.

**III. CITIZEN INPUT ON NON-AGENDA ITEMS**

None

**IV. FINDINGS**

None

**V. NEW BUSINESS**

None

## **VI. PUBLIC HEARINGS**

**TA 93-01 Historic Preservation** - The hearing is to consider a Land Development and Planning Ordinance text amendment, initiated by the City of Canby Planning Commission, to add a new Division X, Historic Preservation, Chapter 16.110. This new chapter will establish: 1) the Purpose for Historic Preservation; 2) a Statement of Power and Authority; 3) Definitions; 4) a Historic Review Board, including its responsibilities; 5) Criteria and Procedure for Historic Landmark Designation, District Designation, Corridor Designation, Contributing Resource Designation; 6) Public Hearing Notice and Review Procedures; 7) Improvement, Moving and Demolition Requirements; and 8) other miscellaneous provisions. The effect, if adopted, would be Citywide.

Commissioner Schrader explained that this is a legislative land use regulation amendment and the City is the applicant. He explained the process and procedures and asked if any Commissioner had a conflict of interest. None was indicated.

Mr. Hoffman presented the staff report, and explained that the Historic Task Force requested that the Commission consider recommending that City Council approve a new ordinance which would amend Title 16 of the Code, by adding a new Division X, Historic Preservation, and amend Section 16.38, the Historic Protection Overlay Zone. He discussed the applicable criteria, which standards are listed in Section 16.88.160, and summarized in the staff report.

Mr. Hoffman reviewed the background leading to this proposed Ordinance. The Historic Preservation Task Force, which was appointed by City Council in 1991, recommended that the Ordinance be adopted. The Ordinance is consistent with the Comprehensive Plan and addresses the public need and public purposes of the proposal. The Task Force pointed out that the current provisions in Section 16.38 are not sufficient to do the job of preserving structures and that there is a need for provisions to prevent continued loss of an identified list of historic structures. While the State does not allow a veto right by the property owner regarding whether or not a specific structure is to be designated, the adoption criteria under our proposed ordinance suggests the consideration of ownership factors within the evaluation designation process. In terms of conforming to Statewide planning goals, Goal #5 [Implementing procedures] requires identification of and protection of identified Historical and Cultural Resources. The proposed ordinance is intended as a step in fulfilling this Goal #5.

With regard to changes since the discussion of the previous Historic Preservation "Draft" Ordinance, Mr. Hoffman discussed a few proposed

revisions. He explained that a definition was added regarding a "Certificate of Appropriateness," which would indicate approval of all proposed alternations, construction, and development affecting designated landmarks, districts or corridors. Mr. Hoffman reviewed alternatives to Section 16.110.025. 1) The Planning Commission could function as the Historic Review Board, 2) try to appoint five individuals who are interested in, experienced in, and have expertise or knowledge in the field of historic preservation, or 3) designate such responsibilities to the Clackamas County Historic Review Board, with participation from two local individuals. Further, Mr. Hoffman explained that designating a structure as historic, is actually a zoning action. A criteria statement that includes "consideration" of the owner's inclination about designating the property has been incorporated under each type of designation action. Although an actual veto by the owner of the structure is not possible, this statement requires the Board to consider ownership as part of the evaluation and would be included in the staff report. Wording was inserted under the heading of Minor Alterations regarding the need for a Certificate of Appropriateness when making a minor alteration. The draft ordinance was also modified to include the current language regarding the Secretary of the Interior's current Standards for Rehabilitation, and the Penalties section was corrected to read that demolition fines, in violation of Section 16.110.075, would not exceed \$25,000 per year. Mr. Hoffman also referred to the list of conditional uses under 16.110.150.

Staff finds that the proposed ordinance conforms with the Comprehensive Plan and that there is a public need for the amendments, which serve the public need of the City of Canby. Further, staff concludes that the amendment will preserve and protect the health, safety, and welfare of Canby residents, and that the amendments conform to statewide planning goals and recent legislation. Based on such findings, staff recommends that the Planning Commission recommend approval of the amendments adding a new Division X, Historic Preservation, to Title 16 of the Planning and Development Code, and amending Section 16.38, Historical Protection Overlay Zone.

### **Testimony in Favor**

**Peggy Sigler, Chairperson, Historic Task Force, 9392 S. Gribble Road** explained that something of this caliber is needed to protect the "small-town feel" of this community. Ms. Sigler explained that the County cut-off, on the historical significance point system, is at 40 points.

**Lori Johnson, 19868 S. South End Road** spoke in favor of adopting the ordinance. She stated that she has lived in communities where there was no Historic Ordinance, and some very valuable resources were lost for future generations.

**Gary Eklund, 31220 S.W. Riverlane, West Linn** stated that he is a member of the task force and purchased property across from the Pioneer Chapel because of the uniqueness of Canby according to the historical significance of the County. Mr. Eklund stated that this ordinance is necessary to keep the character of Canby in tact.

**Dana Hill Tyler (no address given)** concurred with the previous speakers. Ms. Tyler stated she has lived in Canby all her life and would like to keep the history of Canby alive. Once significant properties are lost, there is no way to replace them. She strongly supports adoption of this ordinance.

**Martha Schrader, 2525 N. Baker Drive, member of the Task Force,** pointed out that it has been a long and arduous process to develop this ordinance, after reviewing many other similar ordinances from other cities. Throughout the entire process, the public has been invited to attend meetings and give input toward developing the ordinance. Ms. Schrader explained that the Clinton administration has made a commitment, at least for the next 4 years, to continue to financially support historic preservation in the country. Further, she stated that she has materials available to assist people in accessing those funds.

**Darlene Key, Owner, Canby Pioneer Chapel** stated that she is in favor of historic preservation due to the beautiful architecture. She explained that these resources should be available to future generations. Preserving historic preservation enhances the quality of life, especially compared to areas that have been fully suburbanized.

Mr. Hoffman read a letter into the record from the **Historic Preservation League of Oregon** encouraging support of this Ordinance.

### Opposition

**Dorothy Knight Mickel, 655 N.W. Baker Drive** stated that she is opposed to adoption of this ordinance. Further, Ms. Mickel stated that the option of being designated should exist for owners of the properties in question. Ms. Mickel explained that she did not want to have to ask "permission" to improve or make changes to her home.

**Betty Langdon, 216 N.W. 5th** explained that her home was built in 1910. She concurred with Ms. Mickel.

**Patti Moore, 589 N.W. 3rd Avenue** stated that her home was built in 1900. Ms. Moore concurred with Ms. Mickel and Ms. Langdon. The choice should be left up to the owner of the structure.

**Bonnie Zacker, 130 S.W. 6th Place** stated that whoever makes the mortgage payment and pays taxes should not have to ask anyone else for permission to make improvements or changes to a building. Ms. Zacker concurred with previous opponents' testimony, agreeing that each property owner should have the freedom to choose whether or not to be considered "historical."

**Ben Sandsus, 540 N.W. Territorial** stated that he was born and brought up in Canby and that his mother owns property at 394 N.W. 1st Avenue. The property was purchased in 1938 and his family has paid taxes ever since then and made huge improvements. He added that his family should be able to do whatever they want with the property, as it was an investment for retirement. With such an ordinance, the government is overstepping its bounds, he added.

**Jim Gilcrest, 517 N.E. 10th Avenue** stated that under Article 5 of the Bill of Rights, private property is protected from being taken for public use without just compensation. He is opposed to adoption of the ordinance.

**Jerry Rothe, 311 S. Ivy Street** stated that he owns two homes on the south side of town. He recalled having testified against apartments being built near his property because he felt it devalued the neighborhood. Mr. Rothe stated that, if adopted, this ordinance would encumber his property. It would hinder the sale of the property. He added that his home was built in 1922 and, for the most part, it is the same as it was then. Prior to his purchase of this home, the bathroom was modernized, but it is now restored back to the original. Mr. Rothe stated this ordinance violates his constitutional rights and forces a situation that will not necessarily be favorable to the homeowner. Further, he stated that he does not object to restoration, but to the lack of free choice.

**Wade Siders (did not sign in)** stated that although historic preservation does have its place, no one's property should be encumbered. Restrictions should not be placed on the types of repairs or restoration that owners want to do.

Mr. Hoffman read a letter of opposition into the record from **Lee Wiegand**.

### **Rebuttal**

**Peggy Sigler** stated that:

1. Revolving loans are a main resource for the restoration and repair of historical structures.
2. This ordinance does not affect the interior of homes in any way. It is strictly directed at the exterior of homes.

3. This ordinance might have had an impact on the opposition to the apartments (Mr. Rothe's statement), due to the long-term affect of it on historical structures in the neighborhood.
4. Historical designation enhances the resale value of older homes.
5. At the court level, property rights has not proven to be an issue.
6. At the Supreme Court level, rezoning as well as historic designation have been found constitutional.
7. The ordinance was originally planned to be instituted on a voluntary basis, as opposed to a mandatory process, but according to LCDC, that is not an option.
8. If a proposal was reviewed at the County level, people could benefit from architectural advice and design guidance and guideline suggestions.
9. The proposed ordinance will protect designated structures, and will also protect the environment it is in (the neighborhood).
10. That before a hearing could take place on each property, it takes a considerable amount of time to research each property planned for designation.

**Martha Schrader** explained that the federal government is committed to providing funds which are allocated through the County and State. There is a rigorous application process which sometimes includes an interview process, in order to access those monies. **Ms. Sigler** further explained that unless someone on a local Board was a historic preservation specialist, Canby would not be eligible for funding from the State.

**Mr. Rothe** described a process he had been through with the City regarding a suspended ceiling in a church, which required an engineer's signature. He agreed certain structures need to be preserved, but not mandated by an ordinance. He added that a process of this sort would include many fees to be paid by the owners of the historic structures.

With no further testimony, the public portion of the hearing was closed for Commission deliberation. The issues discussed included:

1. The point system. Mr. Hoffman explained that the point system is strictly administrative but could be built into the Ordinance if the Commission so desires. The point system, he explained, evaluates the significance of the structure. He further explained that the County includes the point system in their ordinance. Under State criteria, if conflicts are anticipated between designating or not designating a structure, they must do an Economic, Social, Environmental and Energy Analysis, which procedure is outlined in the State Administrative Rules. This factor is built into the proposed ordinance, which is a necessary consideration at the time of adoption. The thrust of this procedure is to figure out whether the benefits of designating outweigh the benefits of continuing any expected conflicting use without designation.
2. How the ordinance would be implemented - whether phased in or all inclusive. Mr. Hoffman explained that Council prefers consideration of structures should be done individually, rather than by large groups. A hearing would be held on each individual structure.
3. Fees for application, which were not addressed.
4. The criteria for the Board to consider if the Ordinance is adopted.
5. The three properties already designated as Historic Structures under Ordinance No. 742.
6. The Commission agreed that, from the testimony received, most property owners had no objection to restoring the homes, but objected to the idea of it being mandated, as opposed to being voluntary. According to L.C.D.C., permitting designation on a voluntary basis is **not** optional.
7. Mr. Hoffman explained that minor modifications to an existing residential structure within an existing residential area for the same use, the ordinance proposes that the revision be reviewed by staff. If the modification is a major renovation, it would have to go before the Historic Review Board. Normal maintenance would need no review.
8. Mr. Hoffman explained that those people who desire to have their homes designated, the current ordinance does not work because it does not spell out specific review criteria.
9. The Commission agreed that it would not serve as the Historic Review Board, especially as there is nobody on the Commission with historic expertise. Mr. Hoffman explained that the County will act as the

Historic Review Board, for a fee, and two residents would sit on the Board to represent Canby. The Commission further agreed to suggest to City Council that it would prefer a process where high priority structures of more historical significance, where owners wanted designation, would be designated first. The Commission agreed it would look into the formation of a local board later on in the process, after Canby has gained some experience.

10. The Contributing Resource Designation which, Ms. Sigler explained, applies as interim protection for properties have been identified, but not yet researched. She further stated that this requirement is imposed by LCDC. The Commission took a straw poll and decided 5-2 to recommend that the Contributing Resource Designation section be omitted from the proposed ordinance. The Commission further agreed to retain the portion about Contributing Resources in Historic Districts.
11. Whether or not the ESEE is a realistic way for property owners to have recourse. Mr. Hoffman explained that State Rule OAR 660-16-005 is a process for looking at resources that might be threatened, as to whether or not designating or preserving them, is important enough as compared to Economic, Social, Environmental and Energy benefits. It boils down to whether designating or protecting them is more important than loss of that resource. In this case, ownership can be a factor to be considered, although the State mandates that a property owner cannot have "veto" right.

The Commission agreed to amend the ESEE statement by striking out the words "including consideration regarding ownership." The sentence would then read, "Through an Economic, Social, Environmental and Energy analysis (E.S.E.E.), the benefits of designating the proposed landmark outweigh the benefits of continuing any expected conflicting use or uses without the designation. The following sentence would be added: The desire of the owner shall be given due consideration, but not be the sole basis for the decision of whether to approve the proposed landmark or district. Mr. Hoffman explained that if he was writing the staff report, and the owners wishes were known, it would certainly be taken into consideration when he made his recommendation. The Commission agreed this was the best way to try to protect the property rights of the citizens.

12. That the owner cannot do major renovation without approval, yet the owner can demolish the resource if he or she sees fit to do so.



13. That owners of designated properties can make whatever changes they want to the inside of the house; that it is the outside that must be preserved, if designated as an historic property.
14. Commissioner Elliot explained that his home is one of the three already designated in Canby. When it came time to do repairs, he sought expert recommendations to keep it within the historic guidelines. It proved to be less of an encumbrance than the previous owner believed.
15. The demolition process was discussed. An owner could demolish a structure if a buyer could not be found within a four month period.
16. The Commission expressed concern with "wholesale" designation. Mr. Hoffman explained that designation is controlled by how fast the Council is prepared to make such approvals. He further explained that, in order to designate a large number of properties, the City would need a local Board as the County is swamped with other priorities. Ms. Sigler explained that the County is broken up into regions. Thirteen to 15 properties are heard at each hearing. There are 2-3 hearings per region and no more than two regions are heard per year.
17. Commissioner Maher explained that she'd spoken to people in Jacksonville who stated that their homes, after being designated as historic structures, appreciated in value.
18. The issue of initiating the landmark designation procedure. A petition signed by residents was discussed and increasing the number of necessary signatures from 20 to 40, to give City Council a better idea of whether a property should be designated, or to possibly raise the application fee to weed out the frivolous petitions. Such changes would convince the public that the Commission is looking out for their rights. Ms. Sigler explained that initiation of the application merely puts the wheels in action to start the research process. The Commission further agreed to strike out "Historic Review Board" as one of the initiators of the landmark designation procedure.  
  
The Commission agreed to recommend that Council either increase the number of signatures on a petition, or omit the petition process entirely.
19. With regard to Section 16.110.150, Uses Permitted, the Commission agreed to recommend that 2.b. read: "will not **significantly** adversely affect surrounding uses; and."

20. The Commission agreed to incorporate the modifications and amendments to the earlier version of this ordinance, which Mr. Hoffman discussed earlier.

Commissioner Elliot moved to recommend approval of TA 93-01, amending the provisions of Title 16 of the Canby Municipal Code by adding a Historic Preservation Division, and amending Section 16.38, thereby adopting the proposed Historic Preservation Ordinance, as amended during Commission deliberation. Commissioner Mihata seconded the motion and it carried 4-3, with Commissioners Fenske, Wiegand, and Gustafson voting no.

## **VII. COMMUNICATIONS**

### **Emergency Access Easement - Willow Creek #1**

Mr. Hoffman explained that, as part of the conditions of approval for Willow Creek Estates, Phase 1, an emergency access easement was required between Lots 7 and 8. He read a letter into the record from Stan Kazebee, of Kazebee-Nelson Co., who is building homes in Willow Creek Estates on Lots 7 and 8, both of which are affected by a 10 foot easement for emergency access. Mr. Kazebee was requesting that the easement be vacated because it has no practical benefit to the subdivision and adversely affects the value and use of the two lots. He explains that the homeowners would not be able to fence their property line for privacy and security and stated further that neither of the interested parties would purchase the lots unless they were able to do so. Mr. Hoffman then explained that he spoke with the Fire Marshal and Police Chief, who both said there is minimal need for the easement since the width of Teakwood Drive is sufficient for circulation purposes, and additional emergency access is not needed. Mr. Hoffman explained that he was bringing it before the Commission because neither the Fire Marshal, the Police Chief, nor staff had requested it originally, and it was a condition imposed by the Commission.

Wayne Scott explained that since the condition was imposed, an embankment was found which is approximately 1-1/2 to 2 feet high, which would make access difficult. Additionally, a street light was installed in the center of the easement, which would have to be moved if the easement remained. The Fire Marshal and Police Chief have both indicated that, should an emergency arise, which would necessitate going off-road, they would simply cross whatever lawns they had to. Further, he explained that the plat was recorded with the easement showing.

Commission discussion included the following issues:

1. Whether any block more than 800 feet must have an additional pedestrian access. Mr. Hoffman explained that it was less than 800 feet.
2. Its concern about having only one access in or out of this development on a public street. Mr. Hoffman described the design of Willow Creek 2. Mr. Hoffman explained that Teakwood Drive is proposed to be extended to the south and east as part of Phase 2, and would access the adjacent property with an eventual extension to Redwood Street.
3. That the single entranceway, which has an island in the middle, is very unlikely to be totally blocked. Additionally, because there will not be more than 60 homes in this phase, two access points are not required. Furthermore, the Commission was agreeable to vacating the easement as long as the record shows that the stone wall will not extend to the present location of the easement.
4. Mr. Hoffman explained the administrative easement vacation process, whereby adjacent property owners are notified and given a period of time within which to respond. If no responses are received by the City, the easement vacation is registered at the County. The Commission suggested that all property owners in Willow Creek be notified.

**The Commission agreed unanimously to vacating the easement.**

### ***VIII. COMMISSION DISCUSSION OF PLANNING ISSUES***

Delayed from earlier on the agenda, but time did not permit Commission discussion of planning issues.

## **IX. DIRECTOR'S REPORT**

Jim Wheeler explained that Dave Anderson requested approval to reduce the recently approved commercial office building by two feet, to provide 5 feet of space to the property line, to be able to put a window in on the west side of the building. After reviewing the design of the building, it appeared to need more light and, to meet Building Code, additional area would be needed to add a window. This appeared to be the easiest solution. The Perriwinkle groundcover would be extended in front and down the side.

**The Commission agreed 7-0 to approve the reduction.**

Mr. Wheeler explained that Redwood Meadows was trying to get the final plat submitted for signature. Since Willow Creek offered their wetlands to be dedicated to the City and a portion of the wetlands will come in with the Redwood Meadows subdivision, the City requested that they dedicate the wetlands with the apartments. The concern was how it affected the density, but the plan for the apartments shows a 15 foot buffer from the wetlands. With a 10 foot buffer there is enough land remaining on the property for the 57 units for an appropriate project density, without changing the location of any of the buildings. The buildings would be 20 to 25 feet from any land dedicated to the City. The developer would also like to know if it would be appropriate to go ahead and include, along with the part being dedicated in Redwood Meadows, an offset to the Parks Systems Development Charge, depending on appraisal. Although wetlands have very minimal value, Mr. Hoffman explained that the advantage to the City is to be able to protect and control the wetlands as a storm water basin/retention area. Further, he explained that some appraisers value the wetland area as parkland.

The Commission discussed how the property would be appraised. Mr. Wheeler explained that the owner has to present an appraisal and the City has the opportunity to hire its own also.

The Commission agreed that the dedication should be subject to Council approval of the appraisal that is submitted, to offset the Parks Systems Development Charge. Mr. Wheeler explained that the Redwood Meadows portion that is being dedicated would have a higher value than most wetlands because it has a portion of land outside of the wetlands. Although there are limitations because of access, some of the land is developable. The Commission made it clear that while it was not adverse to considering the wetlands to partially offset SDCs, it does not consider the wetlands to have high value as park land.

Mr. Wheeler then reviewed some of the amendments included in the Zone Text Amendments that will be heard by the Commission on March 22nd.

The Commission asked that feedback from the Planning Conference in Ashland be discussed at the first meeting in April, for those who were unable to attend.

**X. ADJOURNMENT**

The meeting was adjourned at 11:05 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joyce A. Faltus".

Joyce A. Faltus